



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 22, 2022

IN THE MATTER OF:

Appeal Board No. 618308

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board No. 618308, the Commissioner of Labor appeals from the decision of the Administrative Law Judge filed September 13, 2021, insofar as the decision overruled the initial determination holding the claimant ineligible to receive benefits, effective March 30, 2020, on the basis that the claimant did not comply with reporting requirements.

In Appeal Board No. 618309, the Commissioner of Labor appeals from the decision of the Administrative Law Judge filed September 13, 2021, which overruled the initial determination charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$10,200.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$4,686.50 in Pandemic Unemployment Assistance (PUA) benefits recoverable pursuant

to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a), and Lost Wages Assistance (LWA) benefits of \$1,800.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5).

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance on behalf of the claimant.

The Board considered the arguments contained in the written statements submitted on behalf of the claimant and the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant has been working for an airline for 23 years as a full-time international flight attendant. She worked out of New York City airport hub. The claimant is married to a British citizen. She maintains a home address in North Carolina. She is not a full citizen of the United Kingdom, but she has the right to work in the United Kingdom. The claimant lives in the United Kingdom and commutes to New York for work. After she completes her work hours for the month, the claimant flies back home to London until the next time she has to work.

In 2020, the claimant's last trip for the employer was on or about January 19 and she returned to the United Kingdom on January 21, 2020. The claimant was furloughed on or around March 1, 2020. The claimant filed a claim for benefits on April 18, 2020, effective April 13, 2020. She filed her claim online from the United Kingdom. At the time of filing her claim, travel to the United States was not allowed for persons from the United Kingdom. If she had travelled to the United States against government advice, she would have had no medical insurance because her travel insurance would have been voided. She also would not have been allowed to return to the United Kingdom because her travel would be deemed nonessential, as she is not a citizen of the United Kingdom.

On April 21, 2020, shortly after filing her claim, the claimant received an out-of-country questionnaire from the Department of Labor. She completed the questionnaire indicating that she travelled to the United Kingdom on January 21, 2020 to see family and that she has not returned home because she was stuck abroad due to border closures and because non-essential travel is prohibited. The claimant was unable to get through by telephone to talk to someone at the Department of Labor.

After filing her claim, she certified for benefits each week from April 21, 2020 through April 11, 2021. In each certification she indicated that she was ready, willing, and able to work. As a result of her certifications, she received \$10,200.00 in FPUC benefits, \$4,686.50 in PUA benefits and \$1,800.00 in LWA benefits.

**OPINION:** The credible evidence establishes that the claimant has been in the United Kingdom since January 21, 2020. It is well-settled that a claimant who is outside of a jurisdiction which is part of the Interstate Benefits Payment Plan is not available for work, cannot register and cannot report (See, e.g.,

Appeal Board Nos. 561517, 557498, 557285, 514717, 482073, and 372361). The claimant was, and remains, in the United Kingdom. The United Kingdom is not a signatory to the Interstate Benefits Payment Plan. The claimant was therefore unable to comply with reporting requirements. However, regulations provide that a failure to report may be excused if good cause for the failure is shown. (12 NYCRR 473.3(f)). The Court has held that "[w]hile failure to comply with the reporting requirements can be excused for good cause shown, this is a factual question for the Board to resolve" (Matter of Inatomi, 116 AD3d 1332 [3d Dept 2014]). Good cause must include an assessment of why the claimant was unable to report.

In the case at hand, the claimant, while maintaining an address in the United States, lives in the United Kingdom with her husband, a British citizen, and commuted to New York, the base of operations for her job as an international flight attendant. She returned to the United Kingdom to reside with her husband after she last

worked in January 2020 and was furloughed on March 1, 2020. It is not reasonable to expect the claimant to leave her family and disregard recommendations regarding travelling restrictions. In addition, she would have lost her medical insurance. Further, shortly after filing her claim for benefits from the United Kingdom, the claimant completed an out-of-country questionnaire in which she advised the Department of Labor that she had not returned to the United States because she was stuck abroad due to border closures and because non-essential travel was prohibited. However, although the Department of Labor was made aware of her situation, the claimant was able to certify for and receive benefits. The evidence does not establish that the representatives advised her that she needed to return to the United States to maintain her eligibility. The Commissioner contends that finding good cause is not consistent with prior decisions of the Appeal Board and would adversely affect the Department of Labor. However, the regulations require an assessment of good cause in determining whether a failure to report can be excused. Accordingly, while the claimant failed to comply with reporting requirements, she has demonstrated good cause for her failure to do so. Under these circumstances, due to the travel restrictions in place due to the COVID-19 pandemic coupled with the disclosure that she provided to the Department of Labor regarding her presence in the United Kingdom, we further conclude that the claimant's failure to comply with reporting requirements is excused (See Appeal Board No. 620732 A). In reaching this decision, we note that there is no initial determination regarding whether the claimant was available for

employment before the Board.

Accordingly, the benefits received by the claimant were not overpaid.

DECISION: In Appeal Board No. 618308, the decision of the Administrative Law Judge, insofar as appealed from, is affirmed.

In Appeal Board No. 618309, the decision of the Administrative Law Judge is affirmed.

In Appeal Board No. 618308, the initial determination, holding the claimant ineligible to receive benefits, effective March 30, 2020, on the basis that the claimant did not comply with reporting requirements, is overruled.

In Appeal Board No. 618309, the initial determination, charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$10,200.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$4,686.50 in Pandemic Unemployment Assistance (PUA) benefits recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a), and Lost Wages Assistance (LWA) benefits of \$1,800.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER